

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 289 - SB 1112**

February 19, 2023

**SUMMARY OF BILL:** Requires a sentence of death to be carried out within 30 business days of the conclusion of any appeals or post-conviction relief, if the jury unanimously determines that certain circumstances are met.

Authorizes a sentence of death to be carried out by electrocution as an alternative to lethal injection if the Commissioner of the Department of Correction (DOC) certifies to the Governor that the DOC is unable to adhere to the lethal injection protocol required to carry out the sentence of death.

**FISCAL IMPACT:**

**NOT SIGNIFICANT**

Assumptions:

- Pursuant to Tenn. Code Ann. § 40-23-114(e)(1)-(2), for any person who commits an offense or has committed an offense for which the person is sentenced to the punishment of death, the method of carrying out the sentence shall be by lethal injection. The alternative method of carrying out a sentence of death is by electrocution. The alternative method is authorized to be used if:
  - Lethal injection is held to be unconstitutional by a court of competent jurisdiction; or
  - The Commissioner of DOC certifies to the Governor that one or more of the ingredients essential to carrying out a sentence of death by lethal injection is unavailable through no fault of the DOC.
- Authorizing a sentence of death to be carried out by electrocution as an alternative to lethal injection if the Commissioner of DOC is unable to adhere to the lethal injection protocol will not change the number of sentences of death carried out.
- Any impact on state expenditures associated with carrying out a sentence of death by electrocution in limited instances is estimated to be not significant.
- The proposed legislation requires a sentence of death to be expedited and carried out within 30 business days of the conclusion of any appeals or post-conviction relief, if the jury unanimously determines:
  - The offense involved the death of three or more victims whom the defendant killed using one or more deadly weapons;

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- The defendant committed the offense by using one or more deadly weapons on the grounds of a public or private elementary, secondary, or postsecondary school; or
- The defendant committed the offense by killing a first responder, as defined in § 39-13-116, who was acting in the course of the first responder's employment at the time of the offense and the evidence presented at trial proving the defendant's guilt was incontestable, which may include, but is not limited to video evidence depicting the defendant committing the offense or deoxyribonucleic acid evidence linking the defendant to the offense.
- Based on information provided by the DOC, over the last 10 years there have been 7 inmates who served an average of 33.10 years incarcerated before being executed.
- The average time between final appeals and execution is 225.29 days.
- This analysis assumes the proposed language will apply to offenders convicted on or after July 1, 2023.
- Requiring a sentence of death to be carried out within 30 business days of the conclusion of any appeals or post-conviction relief in certain circumstances will result in some offenders serving 195.29 days less incarcerated (225.29 – 30). However, the first impact would not be seen until FY55-56.
- Pursuant to Public Chapter 1007 of 2022, cost decreases are to be estimated on the actual estimated costs to be reduced over the next three-year period; therefore, any decreases in time served by the proposed legislation surpass the window of this analysis and will not significantly impact incarceration costs in the immediate future.
- Requiring a sentence of death to be carried out within 30 business days of the conclusion of any appeals or post-conviction relief in certain circumstances will limit the amount of time available for the Post-Conviction Defenders Conference (PCDC) to prepare for and conduct clemency proceedings.
- The proposed legislation will not result in an increase in the caseload of the PCDC or Public Defenders Conference; therefore, any fiscal impact to state or local government is estimated to be not significant.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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